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# United States Senate

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COMMITTEE ON THE JUDICIARY  
COMMITTEE ON FOREIGN RELATIONS  
COMMITTEE ON THE BUDGET  
SPECIAL COMMITTEE ON AGING  
DEMOCRATIC POLICY COMMITTEE

November 10, 1997

Mr. William Kennard  
Chairman  
Federal Communications Commission  
1919 M. Street, N.W.  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Dear Chairman Kennard:

I am writing on behalf of several Wisconsin municipalities who have expressed strong concern about FCC's Notice of Proposed Rule Making (NPRM) regarding the preemption of state and local zoning and land use ordinances which may affect placement of broadcast and cellular towers.

I understand that this NPRM is the result of a petition by the National Association of Broadcasters that asks the Commission to adopt rules permitting the Commission to preempt local and state laws that might delay the implementation of digital television (DTV). I am told that the proposed rule by the petitioners would set specific time limits within which state and local government must act in response to requests for approval of the placement, construction or modification of broadcast transmission facilities. In addition, the rule would "remove from local consideration certain types of restrictions on the siting and construction of transmission facilities". And finally the rule would preempt all state and local laws that impair the ability of licensed broadcasters to construct or modify towers unless the state or local government can prove their regulation is "reasonable in relation to a clearly defined and expressly stated health or safety objective".

I have strong concerns about this proposal because it infringes on the rights of states and localities to make important zoning decisions in accordance with the development objectives of the state or locality and on the rights of residents of states and localities to fully participate in governmental zoning and land use regulation processes. Despite the presence of state or local rules requiring notification of adjacent land owners, hearing requirements and appeal periods, the proposed rule would impose specific time periods during which zoning disputes between entities seeking to build or modify towers and the state or locality must be resolved. Failure of a locality to act within the specified time period will result in the request being deemed granted.

The rule also appears to entirely preempt a local or state law regarding tower placement even if that law is intended to ensure the health or safety of the community. As written, the rule would

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Mr. William Kennard

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allow health and safety concerns to be overridden by the federal interest in the construction of transmission facilities and in the promotion of fair and effective competition among electronic media. While the federal government may have a keen interest in promoting DTV and in fair and effective competition, it is unclear why those concerns should override local health and safety concerns. In addition, state or local zoning or land use laws designed to address historic or aesthetic objectives would be preempted under this rule. States and localities should be able to maintain the right to control development within their jurisdiction without undue interference by the federal government. Federal preemption of zoning decisions should be the exception rather than the rule. Unfortunately, the rule proposed under MM Docket No. 97-182 would make federal preemption of legitimate local and state zoning and land use laws common place.

While I understand the FCC's interest in encouraging the roll-out of DTV, it is unclear why such extensive preemption authority is necessary to achieve that goal. I remain extremely concerned about the proposed rule and urge you to withdraw it from the Commission's consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Russ Feingold".

Russ Feingold